



UNITED STATES
HOUSE OF REPRESENTATIVES
December 12, 2018

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The Honorable Ajit V. Pai
Chairman, Federal Communications Commission
455 12th Street, Southwest
Washington, DC 20544

Dear Chairman Pai:

I write regarding the Federal Communications Commission's Second Further Notice of Proposed Rulemaking, "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311). I am concerned that this rulemaking may have the effect of eliminating Public, Educational and Government (PEG) channels from cable system line-ups. This is the opposite effect intended by the Cable Act passed by Congress.

Wisconsin PEG access channels have been serving the needs of Wisconsin communities for information and coverage of their communities for decades. They have been able to do so because of the federal Cable Act.

The Cable Act enables local franchising authorities to request PEG access channels from cable operators so that a source of local programming can be developed by the community on these multichannel systems otherwise filled with commercial program services that do not recognize or serve local needs. PEG channels meet the purposes of the law. By providing these channels, cable systems are being responsive to local needs and interests and providing diverse sources of information.

Federal law allows cable operators to take back these channels if they are not being used for local programming. 47 USC 531(d). In Wisconsin's state franchise law, there is provision for this.

Unlike some other states, Wisconsin's state franchise law currently does not require a cable operator to assess a PEG fee or provide any other in-kind support. Operators are only required to provide channel capacity and to transmit programs from origination points designated in a locality. Local municipalities must pick up the tab for construction if they move or want a new origination point and they currently pay for all operating and capital expenses for the PEG channels out of the franchise fee. Under your proposed rule, I am concerned that if Wisconsin municipalities also have to pay for the PEG channels themselves, it would force nearly all cities to abandon their channels for lack of funds.

Two of the purposes of the Cable Act are to “assure that cable systems are responsive to the needs and interests of the local community” and to “assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public” (47 USC 521(2) and 47 USC 521(4)).

PEG access channels serve both purposes. Under the Cable Act, these channels are intentionally set aside for the use of the public and are treated in the law separately from channels designated for commercial purposes. 47 USC 532 (b)(6)

If this rulemaking allows a cable system to charge a franchising authority for PEG channels as if they were commercial channels, the operator would no longer be acting to respond to local needs; it would be acting on its own behalf. Requiring communities to pay operators for the channel capacity, transmission of programming, or the facilities required to do so would defeat the intention of the law.

I encourage the commission to review the law carefully to ensure that its purposes are not being undermined by the proposed rule and to properly consider the impact of the changes on the varying franchise laws that states have put in place.

PEG access channels serve an important role in providing local information about government, schools, and the community in which subscribers live. The current FCC proposal is more than likely to eliminate these channels in Wisconsin. A rulemaking that implements the Cable Act should not undermine its goals.

Thank you for your attention to this issue.

Sincerely,



Mark Pocan
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 13, 2018

The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, D.C. 20515

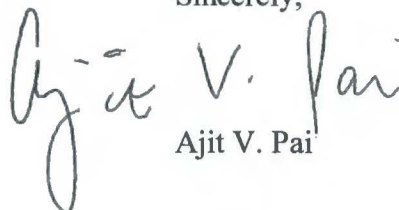
Dear Congressman Pocan:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. As you know, the Communications Act limits franchise fees to 5% of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). The U.S. Court of Appeals for the Sixth Circuit has held that the terms "tax" and "assessment" can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and considered as part of the Commission's review.

Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai